

Chapter ERC 40

ROSTER OF AD HOC ARBITRATORS AND FACT FINDERS

ERC 40.01 Policy.
ERC 40.02 Qualifications for admission to roster.
ERC 40.03 Application for admission to roster.

ERC 40.04 Removal from roster.
ERC 40.05 On-going requirements of roster members.
ERC 40.06 Roster administration.

ERC 40.01 Policy. To promote labor peace, the commission maintains a roster of individuals, not employed by the commission, who are available to serve as fact finders, grievance arbitrators, and interest arbitrators in statutory and contractual dispute resolution processes concerning private, municipal, state and UW System faculty and academic staff sector labor disputes arising in Wisconsin. The following criteria and procedures for admission and removal of roster members and for providing panels of roster members to disputants have been developed to insure the quality and professionalism of the services provided by roster members when serving as neutrals in labor disputes under ch. 111, Stats.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 40.02 Qualifications for admission to roster.

The roster shall be limited to individuals who are competent and willing to participate in grievance arbitration, interest arbitration and fact-finding. The qualifications used by the commission for admission to and continued service on its roster are as follows:

(1) **ELIGIBILITY REQUIREMENTS.** (a) *Residency.* Roster members shall maintain their principal place of residence in 1 of the following states: Wisconsin, Illinois, Indiana, Iowa, Michigan or Minnesota. Maintenance of a mail box or mail delivery point is not sufficient to satisfy this requirement.

(b) *Appointment acceptance.* Roster members shall be willing to accept appointments in all of the following types of proceedings:

1. Fact-finding.
2. Contract grievance arbitration.
3. Interest arbitration.

(c) *Neutral status.* Roster members shall not engage in any employment or hold any title or office that conflicts with the role of a neutral in labor-management dispute resolution. Roster members shall not be, and shall not have been for at least 1 year, an advocate for public or private sector employees, employee organizations, employers or employer organizations. For purposes of this chapter, an "advocate" is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant in labor relations matters, including to the following subjects:

1. Union representation and recognition.
2. Collective bargaining.
3. Equal employment opportunity.
4. Arbitration.
5. Unfair labor practices.
6. Labor-related litigation.
7. Wage and benefit administration.
8. Unemployment compensation.
9. Worker compensation.
10. Occupational health and safety standards.
11. Minimum wage.
12. Other labor standards matters.

(2) **KNOWLEDGE, SKILLS AND ABILITIES, AND QUALIFICATIONS.** The knowledge, skills and abilities, and qualifications for roster members shall be as follows:

(a) Knowledge of labor relations concepts, principles and practices regarding the following:

1. Contract administration and negotiations.
2. Interest arbitration and grievance arbitration.
3. Labor laws.
4. Local government laws.
5. Related matters.

(b) Acceptability to parties in Wisconsin labor relations disputes.

(c) Impartiality, meaning lack of any real or apparent conflict of interest, and ability to render neutral decisions.

(d) Knowledge of hearing procedures, ability to conduct hearings and to develop an accurate record of proceedings.

(e) Ability to analyze testimony and exhibits and to render competent, well-reasoned and accurate decisions.

(f) Knowledge of, and compliance with, the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission.

(g) Ability to produce written decisions within reasonable time limits. Roster members are encouraged to render awards and fact-finding recommendations not later than 60 days from the date of closing of the record as determined by the roster member, unless otherwise agreed by the parties or specified by law.

(h) Knowledge of relevant commission rules and policies.

(i) General knowledge of public sector finance and the ability to calculate costs of wages and fringe benefits.

(j) Ability to effectively apply mediation techniques.

(k) High moral character and integrity.

(3) **EXPERIENCE.** (a) *As a neutral.* Individuals who have functioned as a labor relations neutral for at least 8 years may apply for admission to the ad hoc arbitrator roster. The applicants shall provide 8 arbitration awards, including 2 interest arbitration awards, if the applicant has issued interest awards, or other writing samples. These experience requirements may be waived or reduced if the applicant satisfactorily demonstrates sufficient knowledge and experience in labor law and labor relations, along with proficient writing skills.

(b) *As an advocate.* Individuals who have functioned as labor relations advocates for at least 8 years may apply for admission to the roster provided that at the time of application the applicant has not been a labor relations advocate for at least 1 year. Ten writing samples such as briefs or reports shall be submitted, and applicants may be requested to write 8 practice arbitration awards, including up to 2 interest arbitration awards, based on facts provided by the commission. The award writing requirement may be waived or reduced if the applicant demonstrates sufficient knowledge and experience in labor law and labor relations, along with proficient writing skills.

(c) *As an academic.* Individuals who have taught accredited labor relations courses or accredited labor relations-related

courses on the college level for at least 8 years may apply for admission to the roster. Ten writing samples, such as awards, reports or research papers, shall be submitted. The applicants may be requested to write 8 practice arbitration awards, 4 of which shall be interest arbitration awards. This requirement may be waived or reduced if the applicant satisfactorily demonstrates sufficient knowledge and experience in labor law and labor relations, and proficient writing skills.

(d) *Combination of neutral, advocate or academic experience.* The commission may consider any combination of experience identified in pars. (a) to (c) and other relevant experience.

(e) *Training program participants.* Notwithstanding pars. (a) to (d), any person may apply for admission to the ad hoc roster following successful completion of training under s. 111.71 (5), Stats. Applicants for training may be referred to an evaluator selected by the commission for an assessment of skills and abilities reasonably required in order to function successfully as a neutral in labor relations dispute resolution. A program may be designed to provide appropriate training to address applicants' identified needs. The applicant may be charged a reasonable fee for participation in the training. The fee shall reflect preparation and actual training time reasonably expended on behalf of an applicant.

(4) **REFERENCES.** Applicants for admission to the roster shall supply the names, addresses and phone numbers of at least six professional references, 3 of which shall be labor organization references and 3 of which shall be employer references.

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ERC 40.03 Application for admission to roster.

(1) **APPLICATION FORM; SUBMISSION; CONSIDERATION.** Qualified individuals who are interested in being admitted by the commission to the roster may obtain an application form from the commission. The completed application along with writing samples and references shall be transmitted to the commission as set forth in s. ERC 10.06 (1). The commission shall review the completed applications and shall decide whether an applicant shall be admitted to the roster. The commission shall base its decision on the criteria listed in s. ERC 40.02. After reviewing the application, the commission may interview the candidate to obtain additional information relevant to the individual's qualifications. Candidates shall provide complete and accurate information on the application and during the interview. Failure to do so may result in rejection. Individuals shall notify the commission of any changes in status which are relevant to the individual's qualifications.

(2) **NOTIFICATION OF APPLICATION DISPOSITION.** A candidate who is found to be qualified to serve on the roster shall be added to the roster if the commission determines there is a need for additional individuals to be added. Each applicant shall be notified in writing of the commission's decision and reasons.

(3) **INTEGRITY OF ADMISSION PROCESS.** No candidate may attempt to influence the commission or staff members regarding admission to the roster by any improper means, including gifts or other inducements to agency personnel. However, nothing in this chapter is intended to preclude a potential applicant from requesting information or advice from the commission concerning the likelihood of the potential applicant's future admission to the roster.

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ERC 40.04 Removal from roster. (1) NATURE AND CONDITIONS OF ROSTER MEMBERSHIP. Admission to the roster does not create a right to continued roster membership or a right to be placed on any given panel. Except as noted in s. ERC 40.06 (3), roster members do not have a right to be placed on a minimum number of panels in any fixed period, such as a month or a year.

(2) **BASES FOR REMOVAL.** Roster members may be removed on the commission's own motion or at the request of an individual or

organization. Removal shall be at the discretion of the commission, based on the following:

- (a) Failure to comply with this chapter.
- (b) Failure to meet, on a continuing basis, the commission's roster member qualifications.
- (c) Failure to provide the commission with complete and accurate biographical data and to keep the commission informed of changes in residence and availability to arbitrate cases.
- (d) Repeated delinquency in submitting awards.
- (e) Refusal to comply with requests from the commission concerning arbitration activities and potential conflicts of interest.
- (f) Unacceptability to the parties, which may be evidenced by a low rate of selection over a period of time.
- (g) Failure to disclose to the commission any personal relationships or other circumstances which might reasonably raise a question regarding the roster arbitrator's or fact finder's impartiality
- (h) Failure to adhere to appropriate ethical principles.

(3) **REQUEST FOR REMOVAL.** Any individual or organization may submit to the commission, as set forth in s. ERC 10.06 (1), a request that a roster member be removed from the roster. The request shall be in writing and shall contain:

- (a) The name, address and phone number of the requesting party. Fax number and e-mail address shall be included, if available.
- (b) The dispute or disputes in which the requesting party has interacted with the roster member.
- (c) The specific allegations on which the request is based.
- (d) The signature or signature facsimile of the person submitting the request.
- (e) The date on which the request was prepared.

(4) **COMMISSION ACTION.** Subsequent to receipt of information indicating a possible basis for a roster member's removal, or subsequent to receipt of a request for removal of a roster member, the commission, or its designee, shall conduct a preliminary investigation. The commission shall then determine the appropriate action, if any, to be taken, including whether the roster member should be removed from the roster. A roster member who is being considered for removal shall be provided with prior written notice, as set forth in s. ERC 10.07, including a statement setting forth the basis for the commission's consideration of the member's removal. The roster member shall have an opportunity both to provide a written statement of reasons why removal should not take place and to physically meet with the commission to be heard on that subject. The decision of the commission shall be final and shall be placed in a written notice including the reasons for the commission's decision.

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ERC 40.05 On-going requirements of roster members.

(1) **UPDATES OF BIOGRAPHICAL AND FEE INFORMATION.** Roster members shall file an updated biographical and fee information statement when material changes in that information occur and shall keep the commission informed about any material changes in status.

(2) **TRAINING COURSE ATTENDANCE.** Roster members may be required to attend periodic training courses in order to remain on the roster.

(3) **AWARD SUBMISSION.** Roster members shall immediately file with the commission, as set forth in s. ERC 10.06 (1), at its Madison office a copy of all awards and fact-finding recommendations issued by them in cases for which they were selected through commission procedures. Interest arbitration awards shall be transmitted immediately to the commission in electronic form either by physical storage media or e-mail.

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ERC 40.06 Roster administration. (1) SEPARATE IN-STATE AND OUT-OF-STATE ROSTERS; SIZE OF ROSTERS. Separate

in-state and out-of-state rosters shall be maintained so that the size of each roster does not ordinarily exceed fifty (50) members. Notwithstanding the fifty (50) member limits, candidates shall be added to the roster who have either successfully completed training under s. 111.71 (5), Stats., or whose qualifications are such that their addition to the roster would clearly serve the underlying purposes of ch. 111, Stats.

(2) CHANGE OF IN-STATE OR OUT-OF-STATE STATUS. If a member of the in-state roster leaves Wisconsin for more than 60 consecutive days, the roster member shall notify the commission prior to departure and shall be placed on inactive status for the period of their absence. A member of the out-of-state roster who moves to Wisconsin shall become a member of the in-state roster.

(3) SELECTION AND COMPOSITION OF PANELS. The panels of roster members' names submitted to parties by the commission in grievance arbitration under chs. ERC 5, 16, 23 and 63, interest arbitration under chs. ERC 30 to 33 or fact-finding cases under chs. ERC 14, 25 and 65 shall be generated by computer in a man-

ner designed both to permit any roster member available to accept appointments to be selected for any panel and to equalize the number of times each in-state roster member's name is sent out and to equalize the number of times each out-of-state roster member's name is sent out during any period of availability to accept appointments. Unless otherwise jointly requested by the parties, one out-of-state roster member shall be included on each grievance panel, on each s. 111.77, Stats., and ch. ERC 30 police-fire interest panel, on each fact-finding panel under ch. ERC 14, 25 or 65 and on each s. 111.70 (4) (jm), Stats., and ch. ERC 31 police interest panel. Unless otherwise jointly requested by the parties, one out-of-state roster member shall be included on the seven name panel provided in s. 111.70 (4) (cm), Stats., and ch. ERC 32 or 33, cases in which the parties agree not to limit the panel to in-state arbitrators. No resident of the city which is party to the dispute shall be included on a s. 111.70 (4) (jm), Stats., and ch. ERC 31 police interest panel.

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